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DATE FILED: 5/8/08

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May 8, 2008

The Hon. Andrew J. Peck
United States Magistrate Judge
For the Southern District of New York
500 Pearl Street, Rm. 1370
New York, NY 10007
By fax to 212-805-7933

Re: O'Grady v. Butler
SDNY Index 07-8207

BY FAX

MEMO ENDORSED 5/8/08

*Alleged court endorsement about
of this case on page of court
business process, etc.*

SO ORDERED:

Hon. Andrew J. Peck
United States Magistrate Judge

Dear Magistrate Judge Peck:

I have received a letter from Mr. Koenig, dated May 5, 2008, rejecting our expert disclosure for Dr. Charles Bagley, which was mailed to plaintiff's counsel on May 2, 2008. I realize that the disclosure was one week late, but, for the reasons set forth below, respectfully request that the court permit use of this expert anyway.

I was unaware that the insurer had sent plaintiff for this examination until April 25, when Mr. Koenig called my office and spoke to Mark Stamps to inquire about the report. Mark advised Mr. Koenig that he would check into it and get him the report as quickly as possible. I was not in the office on that day, but Mark called me to advise about his phone conversation with Mr. Koenig and to let me know that he did request the report from the carrier. When I got into the office on Monday, we began preparing the expert disclosure, assuming that we would get the report within the day. On April 30, still waiting for the report, Mark prepared the letter so that we could send the report as soon as it was received. Unfortunately, that was Mark's last week as my paralegal and he was training my new paralegal and when we did receive the report on May 2, the date on the letter was not corrected.

I did not write to the court earlier about this because I thought (apparently incorrectly, however) that counsel intended to accept the disclosure.

No trial date has been set for this case and the pre-trial order is not due until May 30 and I do not believe that plaintiff could claim any prejudice by the late report. Of course, if plaintiff wants his own expert to address the content of the report or conduct a deposition, I will not object.

Accordingly, I request that the Court permit the use of Dr. Bagley at the time of trial based on the expert disclosure served on May 2, 2008.

Very truly yours,



MARJORIE E. BORNES

Cc: Martin, Fallon & Mulle By fax to: 631-421-5439
Jeffrey L. Koenig, Esq. By fax to: 212-227-5090

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
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Dated: May 8, 2008

Total Number of Pages: 2

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TRANSCRIPTION:

MEMO ENDORSED 5/8/08

All other counsel are to advise the Court of their views on this issue by close of business tomorrow, 5/9.